CIVIL REVISION APPLICATION NO. 103 OF 1981

Date of Decision: 22nd March 1995

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE S.D.DAVE

1. Whether Reporters of Local Papers may be allowed to see the Judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Mr. H.J.Trivedi, Advocate for Mr. S.B. Vakil, Advocate for the petitioners
Ms. Mamta Vyas, Advocate for Mr. D.D. Vyas, Advocate for the respondents.

Coram : S.D. Dave, J.
22nd March 1995

ORAL JUDGMENT:

This is a Civil Revision Application filed by the original plaintiffs-landlords. The plaintiffs-landlords had approached the Court of the learned Civil Judge, Senior Division, Surendranagar, by filing Regular Civil Suit No. 232 of 1974 against the defendants for

obtaining a decree of eviction, on the ground that there has been a change of user coupled with the sub-letting of the premises by the defendant no.1 in favour of the defendant no.2, the firm. The second ground for obtaining the decree of eviction is of non-payment of rent for a period of 10 months. This suit of the plaintiffs-landlord came to be challenged by the defendants by filing W.S. at Exh.10 contending that the suit premises can be conveniently divided into two parts and that a portion of the premises was taken on lease by the defendant no.1 alone at the monthly rent of Rs.10/somewhere in S.Y. 2015. Later on, according to the defendants, somewhere in S.Y. 2020, the father of the defendant no.1 had taken on lease the other portion of the premises at the monthly rent of Rs.20/-. According to the defendants, the father of the defendant no.1 was managing the affairs of the family firm who has been joined as the defendant no.2. According to the defendants, after the defendant no.1 had vacated the premises which were taken by him in S.Y. 2015 at the monthly rent of Rs.10/- and later on, these premises were taken by the defendant no.2 in S.Y. 2022 at the monthly rent of Rs.20/- and thereafter, the defendant no.2, the firm held to be in possession of both the portions of the premises and used to pay the rent at the rate of Rs.30/per month. It is on this basis that the case of the plaintiff regarding the sub-letting and the change of the user was contested by the defendants. So far as the question regarding the non-payment of the rent is concerned, the defendants have contended that they were always ready and willing to pay the rent and that the defendant no.2 was never in arrears and all the rent which was demanded by the statutory notice was tendered and paid within a period of one month from the date of the receipt of the notice. On the appreciation of the evidence, the learned Trial Judge had come to the conclusion that the portion of the premises were taken independently by the defendant no.2, the firm and when later on, the portion of the premises taken out on lease by the defendant no.1 were vacated by the said defendant, the defendant no.2, the firm again had taken the said premises on lease. So far as the arrears of rent is concerned, the Trial Court was of the opinion that, no decree could have been passed on this count because, within the statutory period, the defendant no.2 had paid all the arrears claimed in the notice. This view of the learned Trial Judge has resulted in the dismissal of the suit, vide judgment dated January 29, 1979. This judgment and the consequent decree were challenged, of course, unsuccessfully, in Civil Appeal No. 24 of 1979 which came to be decided and dismissed by the learned

Assistant Judge, Surendranagar, vide orders dated October 7, 1980. A view has been taken by the learned Appellate Judge, saying that there was no reason for him to defer with the finding of facts recorded by the Trial Court. The legality and validity of this concurrent findings are sought to be challenged in the present revision application before me.

Learned Counsel Mr. H.J. Trivedi who appears for the petitioners would urge that the concurrent finding of facts rendered by the Courts below are erroneous and that such conclusions could not have deduced upon a careful reading of the evidence. Any how, this contention cannot be accepted in view of the fact that the petitioners-plaintiffs, admittedly, had waited for a period of more than eight years before going to the Court though, according to the evidence on record, they used to know well that the premises are in occupation of the defendant no.2, the firm, and that the same are being utilised as the godown. Both the Courts below were conscious of the fact that though the case would cover the inception of three tenancies, firstly, qua the portion in favour of the defendant no.1, secondly, qua the remaining portion in favour of the defendant no.2 and thirdly, once again qua the portion vacated by the defendant no.1 and leased to the defendant no.2, the plaint was entirely silent in this respect. Both Courts below have appreciated that the record from the Municipality which was heavily relied upon was of no assistance to the plaintiffs. The material columns in Exh.35, the form, were found to be blank. The Education Cess Register at Exh.37 also does not render any assistance to the plaintiff because even if the name of the defendant no.2 has been shown as a person under the care of the firm, no material difference could be inferred or deduced from this document. Moreover, there was the oral evidence coming from the witnesses residing in the same premises that there were two different tenancies, firstly, in favour of the defendant no.1 and secondly, in favour of the defendant no.2 after five years and that later on, the defendant no.1 had vacated the portion of the premises occupied by him and these premises again were leased to the defendant no.2, the firm independently and separately, after a lapse of about one to two years. Thereafter, the defendant no.1 used to pay the rent at the rate of Rs.30/- per month for the entire premises and the same was accepted by the plaintiffs for a period of more than eight years before the suit could be filed. All this evidence, conclusively lead to a finding that there is absolutely no case of sub-letting or the change of the user. The Courts below

were perfectly justified in rejecting the case of the plaintiffs-landlords on this count.

The Courts below have noticed with great pertinence that, whatever was the demand by the plaintiffs-landlords under the statutory notice under Section 12 of the Bombay Rents Act, 1947 was paid by the defendant no.2, the firm within the statutory limit. Naturally, therefore, the plaintiffs were not entitled to a decree of eviction on the ground of non-payment of rent. The Courts below do not appear to have committed any error on this count also.

Thus, for the aforesaid reasons, the present Civil Revision Application fails and the same requires to be dismissed and is hereby accordingly dismissed. The Rule shall stand discharged. There shall be no order as to costs.

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